



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

|

[REDACTED]
LNO/167410

PRELIMINARY RECITALS

Pursuant to a petition filed July 18, 2015, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Other, a hearing was held on August 11, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly issued a warrant for the collection of an unpaid public assistance debt to the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Lareina Horton

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 3, 4, and 29, 2013, the agency issued Child Care Client Overpayment Notices and worksheets to the Petitioner at an address on [REDACTED], Milwaukee informing her that the agency intends to recover an overissuance of child care benefits in the amount of \$12,735.10 for the period of June 24, 2012 – February 28, 2013. The notice also informed the Petitioner of the right

to appeal the agency's determination by filing a request for a hearing within 45 days of the date of the notice.

3. On April 22, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals regarding the overpayment. This appeal was designated as DHA Case No.CCO/148922.
4. On June 20, 2013, the Petitioner withdrew her appeal and the DHA case was closed.
5. On June 7, 2013, the agency issued a revised Child Care Client Overpayment Notice and worksheets to the Petitioner at the address on [REDACTED], informing her that the agency intends to recover an overissuance of child care benefits in the amount of \$11,850.10 for the period of June 24, 2012 – February 28, 2013. The notice also informed the Petitioner of the right to appeal the agency's determination by filing a request for a hearing within 45 days of the date of the notice.
6. On July 2, 2013, the agency issued a Repayment Agreement to the Petitioner at the [REDACTED] address.
7. On August 2, 2013, the agency issued a dunning notice to the Petitioner at the [REDACTED] address.
8. In or about August, 2014, the Petitioner reported a change in address to [REDACTED], Milwaukee.
9. On October 2 and November 4, 2014, the agency issued a dunning notice to the Petitioner at an address on [REDACTED], Milwaukee.
10. On December 12, 2014, the agency issued a notice of state tax intercept to the Petitioner at the [REDACTED] address. It informed the Petitioner that state taxes may be intercepted for an unpaid public assistance debt of \$11,330.10. The notice also informed the Petitioner of the right to request a hearing regarding the tax intercept by filing the request within 30 days of the date of the notice.
11. On June 24, 2015, the agency issued a Notice of Warrant Docketed to the Petitioner at the [REDACTED] address. The notice informed the Petitioner that a warrant has been docketed for the collection of a delinquent child care debt. The notice also informed the Petitioner of the right to request a hearing regarding the docketing of the warrant by filing the request within 21 days from the date of the notice.
12. On July 18, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.
13. Adjustments and payments have been applied to the original outstanding balance of \$12,735.10, leaving a current outstanding balance of \$10,668.90.

DISCUSSION

A hearing officer can only rule on the merits of cases if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by an agency concerning child care benefits must be filed within 45 days of the date of the notice. Wisconsin Shares Child Care Subsidy Policy Manual (CCM), § 3.5.3. An appeal of warrant docketing action must be filed within 21 days of the date of the notice. Wis. Admin. Code § DCF 101.23(9)(a) and Wis. Stat. §49.195(3s). An appeal of a state tax intercept must be filed within 30 days of the date of the notice. Wis. Stat. §§ 49.85(4) and 227.44.

At the hearing, the Petitioner testified that she is only disputing two months of the overpayment – September, 2012 and January, 2013. She asserts that the household was under the gross income limit for those months and should not have to repay the benefits for those months. The Petitioner also testified that she never received the revised child care notice of June 7, 2013 and that she did not know until she received the exhibits that she was liable for those months when income was under the income limit. There was no explanation provided for why the Petitioner would not have received the notice and worksheets issued on June 7, 2013. They were sent to the proper address. Further, according to the

agency and to DHA records, there was an appeal and a resolution of the amount of the overpayment in 2013. The Petitioner had assistance from Legal Aid or Legal Action in negotiating the revised overpayment.

Based on the evidence provided, I conclude that the Petitioner's appeal as to the underlying overpayment is not timely and I have no jurisdiction to rule on the merits of the overpayment. In addition, the appeal is not timely as to the collection actions (the warrant and the tax intercept).

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of November, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 9, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit